

INTRODUCTION to House Bill 553

Montana regulates essentially *all* speech in support of, or opposition to, a ballot issue by any association of two or more people. It does not matter if it is a **social service club, a church, or a married couple**. Any two people who jointly donate a dollar in support of a ballot issue can become an incidental political committee ("IPC") and are subject to onerous registration, organization, reporting, and recordkeeping obligations. **But worse, it is a subjective standard.**

In one case, an out of state entity under a Montana PAC, made a complaint against a Montana organization for violating Montana's Political Practices. This out of state entity, after the complaint was filed folded, and left the state to attack the organization. Montana Political Practices found against the organization stating their reasons as follows:

"Applying the definitions and legal principals, it is clear that when the organization chose to engage in activities supporting the effort to place Issue on the ballot, the organization became an incidental political committee under Montana law, with corresponding reporting obligations. Use of the organizations facilities to obtain signatures on petitions, along with encouragement of persons to sign the petitions, obviously had value to the campaign in support of a ballot issue."

In this case, an organization was converted into an "incidental political committee" for an "expenditure" of, at most, a few dollars worth of utility bills! This is using campaign finance laws to silence organizations, such as social clubs, gun clubs, and churches, etc. and it is un-constitutional.

Failure to comply with the foregoing regulations may result in criminal or civil sanction (MCA §13-37-121) and liability "for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater." MCA § 13-37-128.

Certainly, Montana has legitimate needs to regulate elections, **but this "incidental" political committee law has a host of legal flaws such that it will almost surely be stricken by pending federal litigation.** A prudent legislature might consider correcting the constitutional deficiencies sooner than later.

The CORRECTION we need:

The best guidance comes from a recent case from the well-respected Court of Appeals for the Fourth Circuit, in *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274 (4th Cir. 2008). There, the court considered a definition of "political committee," one element of which was that the party have "**a major purpose**" of supporting or opposing political candidates. *Id.* at 286. The court, relying upon *Buckley v. Valeo*, 424 U.S. 1 (1976), held that merely requiring "a" major purpose to be political support was unconstitutionally vague when defining "political committee." Instead, the court held that under *Buckley*, **the political committee designation could apply only where "the" major purpose—i.e., the primary purpose—of the organization was directed to specified political ends.** *Id.* at 289-90.

Even more to the point, in *U.S. v. Nat'l Comm. for Impeachment*, **the Second Circuit** recognized the constitutional hazard of a law that converts organizations into political committees when they simply speak on a topic that coincides with an election issue:

Any organization would be wary of expressing any viewpoint lest under the Act it be required to register, file reports, disclose its contributors, or the like. On the Government's thesis every little Audubon Society chapter would be a "political committee" for "environment" is an issue in one campaign after another. On this basis, too, a Boy Scout troop advertising for membership to combat "juvenile delinquency" or a Golden Age Club promoting "senior citizens' rights" would fall under the Act. **The dampening effect on first amendment rights and the potential for arbitrary administrative action that would result from such a situation would be intolerable.**

469 F.2d 1135, 1142 (2d. Cir. 1972) (emphasis added).

The Fourth Circuit then considered just what "**the major purpose**" meant, but declined to give a specific definition. It did say quite directly, however, that "**if an organization explicitly states, in its bylaws or elsewhere, that influencing elections is its primary objective, or if the organization spends the majority of its money on supporting or opposing candidates, that organization is under 'fair warning' that it may fall within the ambit of *Buckley's* [major purpose] test.**" *Id.* at 289.

Perhaps more helpfully, it also noted that the plaintiff's proposed definition of "**major purpose**" would be a constitutional definition. That proposed definition stated that an organization had a major purpose of political support where "(1) the organic documents of the organization list electoral advocacy as the organization's major purpose or (2) if the organization spends over 50% of its money on influencing elections." *Id.* at 289 n.6.

Because of this decision by Court of Appeals for the Fourth Circuit, the state of Maine revised their Political Practices laws and defined a Political Action Committee as follows.

☐ Maine Revised Statutes Annotated Currentness

Title 21-A. Elections (Refs & Annos)

☐ Chapter 13. Campaign Reports and Finances (Refs & Annos)

☐ Subchapter 4. Reports by Political Action Committees (Refs & Annos)

→ 5. **Political action committee.** The term "political action committee:"

A. Includes:

(1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to influence the outcome of an election, including a candidate election or ballot question;

(2) Deleted. Laws 2007, c. 477, § 2.

(3) Deleted. Laws 2007, c. 477, § 2.

(4) Any organization, including any corporation or association, **that has as its major purpose initiating**, promoting, defeating or influencing a candidate election, campaign or ballot question and that spends more than \$1,500 in a calendar year for that purpose, including for the collection of signatures for a direct initiative or referendum in this State; and

→ (5) Any organization that does not have as its major purpose promoting, defeating or influencing candidate elections but that **spends more than \$5,000 in a calendar year** for the purpose of promoting, defeating or influencing in any way the nomination or election of any candidate to political office; and

(6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office.

This case has now been heard before the 9th District Court in Washington State.

Plaintiffs have brought an action under 42 U.S.C. S 1983 for declaratory and injunctive relief and nominal damages, citing deprivation of their rights under the First and Fourteenth Amendments To The United States Constitution.

Note: The First Amendment to the United States Constitution is the part of the United States Bill of Rights that expressly prohibits the United States Congress from making laws "respecting an establishment of religion" or that

prohibit the free exercise of religion, laws that infringe the freedom of speech, infringe the freedom of the press, limit the right to peaceably assemble, or limit the right to petition the government for a redress of grievances.

Although the first amendment only explicitly applies to the congress, the Supreme Court has interpreted it as applying to the executive and judicial branches. additionally, in the 20th century the supreme court held that the due process clause of the fourteenth amendment applies the limitations of the first amendment to each state, including any local government within a state.

The decision is pending.